

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

13 Cr. 242 (SAS)

MARK ALLIE, et al.,

Defendant.

**THE GOVERNMENT'S RESPONSE TO DEFENDANT ROBERT TORRES'S
POST-HEARING MEMORANDUM OF LAW**

The government respectfully submits this response to defendant Robert Torres's post-hearing memorandum of law. On the second day of the hearing, Torres for the first time asserted that he had asked for a lawyer while being driven by NYPD officers to the FBI offices at 26 Federal Plaza. Tr. 306 (Torres). Torres also testified that he asked for a lawyer while being questioned by FBI agents at 26 Federal Plaza. Tr. 315-16 (Torres).

By contrast, in the July 2, 2013 affidavit submitted in support of his motion to suppress, Torres mentions being questioned on only one occasion "by law enforcement agents, who I believe were from the FBI," and states that "I told the agents that I did not want to speak to them and that I wanted a lawyer." Torres Aff. ¶¶ 3-4. Torres's testimony makes clear that the law enforcement agents to whom he referred in his affidavit were indeed FBI agents. *Compare* Tr. 315-16 (Torres) (stating that FBI Special Agent Riveros "said well sign this form, then we'll take you to the hospital") *with* Torres Aff. ¶ 5 ("One of the agents told me that they would take me to the hospital to get methadone, but only if I first agreed to answer their questions"). Torres's original memorandum of law also adopts that view. Torres Br. at 1.

The fact that Torres failed to assert in his affidavit that he requested a lawyer while being driven by NYPD officers to 26 Federal Plaza, and only made that assertion after sitting through the testimony of the government's witness, makes clear that Torres simply fabricated that story. Torres's claim that he in fact asked for an attorney prior to being taken to 26 Federal Plaza, but kept that factual allegation in his pocket and failed to make it until the hearing, is simply not credible. For that reason, and the reasons set forth in the government's post-hearing memorandum, the government respectfully submits that Torres's motion to suppress should be denied in its entirety.

Alternatively, the government requests that the court re-open the hearing as to Mr. Torres to allow the government to present testimony concerning Torres's newly-made assertion that he requested a lawyer while in the custody of the NYPD.

Dated: New York, New York
October 29, 2013

Respectfully submitted,

PREET BHARARA
United States Attorney for the
Southern District of New York

By: /s/ Jared Lenow
Jared Lenow
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AFFIRMATION OF SERVICE

JARED LENOW, pursuant to Title 28, United States Code, Section 1746, hereby declares under the penalty of perjury:

That I am an Assistant United States Attorney in the Office of the United States Attorney for the Southern District of New York. That, on October 29, 2013, I caused the THE GOVERNMENT'S RESPONSE TO DEFENDANT ROBERT TORRES'S POST-HEARING MEMORANDUM OF LAW to be delivered by ECF to all counsel of record.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: New York, New York
 October 29, 2013

By: _____ /s/ Jared Lenow
 Jared Lenow